

Submission

to the

Ministry of Business,
Innovation and Employment

on the

Discussion document:
Increasing the transparency
of the beneficial ownership
of New Zealand companies
and limited partnerships

2 August 2018

About NZBA

1. NZBA works on behalf of the New Zealand banking industry in conjunction with its member banks. NZBA develops and promotes policy outcomes that contribute to a strong and stable banking system that benefits New Zealanders and the New Zealand economy.
2. The following seventeen registered banks in New Zealand are members of NZBA:
 - ANZ Bank New Zealand Limited
 - ASB Bank Limited
 - Bank of China (NZ) Limited
 - Bank of New Zealand
 - MUFG Bank, Ltd
 - China Construction Bank
 - Citibank, N.A.
 - The Co-operative Bank Limited
 - Heartland Bank Limited
 - The Hongkong and Shanghai Banking Corporation Limited
 - Industrial and Commercial Bank of China (New Zealand) Limited
 - JPMorgan Chase Bank, N.A.
 - Kiwibank Limited
 - Rabobank New Zealand Limited
 - SBS Bank
 - TSB Bank Limited
 - Westpac New Zealand Limited

Background

3. NZBA welcomes the opportunity to provide feedback to the Ministry of Business, Innovation and Employment (**MBIE**) on its discussion document: *Increasing the transparency of the beneficial ownership of New Zealand companies and limited partnerships (Discussion Document)*. NZBA commends the work that has gone into developing the Discussion Document.
4. If you would like to discuss any aspect of the submission further, please contact:

Antony Buick-Constable
Deputy Chief Executive & General
Counsel
04 802 3351 / 021 255 4043
antony.buick-constable@nzba.org.nz

Olivia Bouchier
Associate Director – Policy and Legal
Counsel
04 802 3353 / 021 876 916
olivia.bouchier@nzba.org.nz

Introduction

5. NZBA supports initiatives to improve transparency around the beneficial ownership of companies and limited partnerships, particularly insofar as such changes are likely to create efficiencies for reporting entities undertaking customer due diligence (**CDD**) under the Anti Money Laundering and Countering Financing of Terrorism Act (**AML/CFT** or **AML/CFT Act**).
6. However, we note that if the register of beneficial ownership (**Register**) is to create real efficiencies for reporting entities it must record:
 - (a) verified information only; and
 - (b) chain of ownership information.

That submission is explained in more detail below.

Question one

7. NZBA agrees with the nature of the problem as set out in the Discussion Document – it is complex and multi-faceted.
8. However, we also note that the Register, has a number of limitations which may affect the extent to which the issues around beneficial ownership are addressed:
 - (a) The presumption underpinning the Register is that people will provide information, and that that information is accurate. We consider that if people want to ‘work the system’ they will continue to do so regardless. Accordingly, we consider that information on the Register should be verified (eg by way of passport, utilities bills, etc)
 - (b) As acknowledged at paragraph 42, while Registers are an emerging trend globally, their effectiveness has yet to be evaluated.
 - (c) The Register will not include trusts because ‘privacy and confidentiality have historically been recognised as among the essential virtues of trusts, and a register should be a significant departure from that’ (paragraph 13). However, trusts have also been identified as vehicles that assist criminals in hiding their assets, and as such there may be strong calls for them to be included in the regime. We also note that privacy and confidentiality considerations arguably apply equally to corporates and beneficial owners too.

Question two

9. If the proposed Register operates as intended (and subject to the adoption of the recommendations made in this submission) it will create efficiencies for reporting entities undertaking CDD.
10. However, we consider that the Register would increase transparency and efficiency in a meaningful way if it also records information about the chain of ownership, not just the beneficial owner. Taking figure 3 as an example (pg 13), the reporting entity would need to identify Company Y, Limited Partnership Z and Trust T, as well as Ms A & Mr B. That is because identifying Company X, Ms A and Mr B is not sufficient for CDD purposes. Under the AML/CFT Act, reporting entities must ‘follow the

chain' and evidence the link from the bank's customer to the beneficial owner(s). That information would allow reporting entities to on-board customers that are complex entities with greater ease and less investigation.

11. Additionally, this would reduce the duplication of efforts by reporting entities, in particular, if AML/CFT regulators approve reliance on the Register.

Question three

12. Collection of beneficial ownership information creates significant compliance costs for banks (relative to the collection of individual customer information) because it can be difficult to identify the beneficial owner and in many cases they are offshore or not immediately available. Time spent investigating beneficial ownership, particularly when there are delays in accessing information, can increase compliance costs.
13. If the Register contains verified and up-to-date information which can be used for CDD purposes (and is recognised by the AML/CFT regulators), this would create real efficiencies for reporting entities, and accordingly substantially decrease compliance costs. If not, reporting entities would still be required to undertake their own investigations to verify all information contained in the Register.

Question four

14. For legitimate businesses, NZBA does not think that the Register would be likely to have any material impact on entities deciding whether to register as companies or limited partnerships. However, we note that businesses undertaking illegitimate activities may get around these requirements by using other structures not captured by the proposed changes (eg trusts).

Question five

15. NZBA has no comment.

Question six

16. NZBA supports a blend of options two and three, whereby beneficial ownership information is recorded on a Register that is available to law enforcement agencies and reporting entities. That hybrid approach will ensure that reporting entities have the benefit of the efficiencies which are likely to flow from a Register, as discussed above at Question Three.

Question seven

17. NZBA agrees that the definition of beneficial owner should be aligned with that used in the AML/CFT Act. NZBA would also support the UK approach of attesting that no beneficial owners exist.

Question eight

18. We consider that information collected on beneficial owners should align with the requirements under the AML/CFT Act and should be verified. That way, reporting entities can rely on the contents of the Register for CDD purposes.

Question nine

19. Per our response to Question Six above, NZBA's preference is for a blend of options 2 and 3. Under that approach, beneficial ownership information would not be publicly available. However, it would be accessible by law enforcement agencies and reporting entities.
20. If MBIE considers that it is necessary to publish some information about a company's beneficial ownership in the interests of transparency, we agree that an approach similar to that of the UK should be adopted (ie publishing name and month and year of birth only).

Question ten

21. NZBA agrees that the obligation to ensure information contained on the Register is up to date should fall both on the beneficial owner and the corporate.
22. For example, these obligations could be enforced by:
 - (a) Creating an offence for providing false or misleading information to the Register.
 - (b) Making registration of the company contingent on the provision (and verification) of all mandatory information.

Question eleven

23. To ensure the accuracy of the Register, beneficial ownership information should be updated within 20 working days (as is required by s 159 the Companies Act 1993 in the event of a change of director).
24. Additionally, entities could be required to attest to the accuracy of their beneficial ownership information as part of their annual return.

Question twelve

25. NZBA considers that the Companies Office Registrar should be permitted to deregister a company without notice.

Question thirteen

26. NZBA agrees that listed companies should not be required to provide beneficial ownership information for the reasons set out in the Discussion Document.
27. Beyond that, we consider that exclusions will limit the efficacy of the Register, and may potentially increase compliance costs (for example, multiple on-boarding processes may be developed based on the exclusions, which in turn may increase the risk of errors when on-boarding).

Question fourteen

28. As explained in response to Question Eleven, we consider that beneficial ownership information should be updated within 20 working days.

Question fifteen

29. NZBA considers that, if the Register is to have the intended effect, the Companies Office should verify the information. As explained in response to Question Three, this would create real efficiencies for reporting entities, would ensure that efforts to compile information are not duplicated, and would substantially decrease compliance costs.

Question sixteen

30. NZBA agrees that an identification number for beneficial owners would be useful for the reasons outlined in the Discussion Document.

Question seventeen

31. NZBA has no comment.

Question eighteen

32. NZBA considers that MBIE should also consider the interaction of the proposed options with the changes proposed in the discussion document: *Publication of directors' residential addresses on the Companies Register*.

Question nineteen

33. NZBA supports the collection of additional information about corporates to enable anomalies to be detected (paragraph 158). Even if not verified, that information would provide reporting entities with useful contextual information.

Question twenty

34. NZBA considers that, in many cases, nominee directors do not have a legitimate purpose, and they are simply used to aid privacy and secrecy.
35. Additionally, it can be very difficult to identify nominee directors. To address that, the Register could create an attestation regime for nominee directors.

Question twenty-one

36. NZBA has no comment.

Question twenty-two

37. NZBA considers that overseas companies and limited partnerships that do business in New Zealand should also be required to provide beneficial ownership information. However, we query how this obligation would be enforced.

Question twenty-three

38. NZBA understands that trust and company service providers pose a high AML/CFT risk due to the nature of their businesses.

Question twenty-four

39. NZBA has no further comments.